

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

MERLE JANES, MD, et al.,
Plaintiffs,

v.

PETER J. HARRIS,
individually, and as agent
for the WASHINGTON DEPARTMENT
OF HEALTH, et al.,
Defendants.

NO. CV-08-200-EFS

**ORDER GRANTING AND DENYING IN
PART DEFENDANTS' RULE 12
MOTION**

Before the Court, without oral argument, is Defendants' Motions in Lieu of Answer Pursuant to 12(b)(6), and (Alternatively) 12(e). (Ct. Rec. 18.) Defendants seek to dismiss Plaintiffs' complaint under Federal Rule of Civil Procedure 12(b)(6) for failing to state a claim; they alternatively move for a more definite statement under Rule 12(e). After reviewing the submitted material and relevant authority, the Court grants Defendants' alternative request under Rule 12(e).

Plaintiff Dr. Merle Janes, MD, is a licensed Washington physician whose responsibilities include prescribing opioids to patients suffering from severe, chronic pain. On June 24, 2008, Dr. Janes, acting as

1 representative for several opioid pain patients, filed suit alleging
2 Defendants - several Washington State employees and entities - improperly
3 impaired Dr. Janes' ability to prescribe opioid medications to his
4 chronic pain patients. (Ct. Rec. 1.)

5 Defendants insist a more definite statement is warranted because
6 Plaintiffs' complaint is long, confusing, and fails to comply with
7 Rule 8(a)'s "short and plain statement" requirement. (Ct. Rec. 18 at
8 17.) Plaintiffs respond that the Complaint is clear, thorough, and
9 identifies the requisite elements for each claim in a logical fashion.
10 (Ct. Rec. 22 at 18.)

11 Federal Rule of Civil Procedure 12(e) permits a party to move for
12 a more definite statement when a "pleading is so vague or ambiguous that
13 the party cannot reasonably prepare a response." The goal is to address
14 unintelligibility, not want of detail. *Castillo v. Norton*, 219 F.R.D.
15 155, 163 (D. Ariz. 2003) (citing *Sheffield v. Orius Corp.*, 211 F.R.D.
16 411, 414-15 (D. Or. 2002)). In evaluating Rule 12(e) motions, courts
17 must assess the complaint in light of Rule 8's minimal pleading
18 requirements, which requires a complaint to contain:

- 19 (1) a short and plain statement of the grounds for the
20 court's jurisdiction, unless the court already has
21 jurisdiction and the claim needs no new jurisdictional
22 support;
- 23 (2) a short and plain statement of the claim showing that the
24 pleader is entitled to relief; and
- 25 (3) a demand for the relief sought, which may include relief
26 in the alternative or different types of relief.

FED. R. CIV. P. 8(a).

1 Here, a more definite statement is warranted. The complaint is 202
2 pages long. It has 302 averments addressing thirteen (13) causes of
3 action. It is very difficult to understand. The "Nature of the Action"
4 section is sixty (60) pages long and blends legal conclusions with vague,
5 speculative facts that are not set forth in any chronological order. One
6 paragraph contains a sentence over thirty (30) lines in length (§ 200);
7 another paragraph contains over forty-six (46) sub-parts and stretches
8 over nineteen (19) pages (§ 225). There are also several citations to
9 irrelevant facts, e.g., a one-page definition of "prolotherapy," its
10 provenance, and how it relates to American jazz.

11 It is true that each of the thirteen (13) counts are identified with
12 headings. But Plaintiffs' attempts at organization via headings are
13 belied by the content contained within the headings. For example, Count
14 3 contains seven (7) sub-parts - A thru G - and continues for nearly
15 twenty (20) pages. These twenty (20) pages are largely repetitive,
16 identify multiple provisions under the Americans with Disabilities Act
17 with no clear purpose, and assert several legal conclusions concerning
18 the state of Ninth Circuit law. Another example are the repetitive
19 references in Count 1 that implementing Washington's Interagency
20 Guidelines on Opioid Dosing for non-Cancer Pain ("Dosage Guidelines")
21 will result in "physical torture or a lingering death." It is unclear
22 why this is important to the claims at issue and how it specifically
23 relates to Defendants.

24 These are just examples. Plaintiffs' complaint is so long,
25 repetitive, confusing, vague, and otherwise unintelligible that it is
26 difficult to reasonably decipher let alone meaningfully answer.

1 *See McHenry v. Renne*, 84 F.3d 1172 (9th Cir. 1996). An amended complaint
2 setting forth a more definite statement is necessary. Because amending
3 the complaint may well draw out justiciable claims, the Court declines
4 to rule on Defendants' Rule 12(b)(6) motion.

5 Accordingly, **IT IS HEREBY ORDERED:**

6 1. Defendants' Motions in Lieu of Answer Pursuant to 12(b)(6), and
7 (Alternatively) 12(e) (**Ct. Rec. 18**) is **GRANTED IN PART** (motion for a more
8 definite statement) and **DENIED IN PART** (motion to dismiss) **with leave to**
9 **renew.**

10 2. Plaintiffs shall file an amended complaint no later than
11 November 3, 2008, consistent with Rule 8(a)'s requirements.

12 3. Counsel are directed to read and abide by Local Rule 83.1's
13 civility code.

14 **IT IS SO ORDERED.** The District Court Executive is directed to enter
15 Order and provide copies to counsel.

16 **DATED** this 6th day of October 2008.

17
18 S/ Edward F. Shea

19 EDWARD F. SHEA

20 United States District Judge
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